Frequently Asked Questions About Pay

Hazardous Duty Pay

Q - Who can receive hazardous duty pay?

1. A - 5 U.S.C. 5545(d) provides that if an employee is covered by chapter 51 (Classification) and subchapter III of chapter 53 (General Schedule Pay Rates) of title 5, United States Code, then he or she may be eligible to receive hazardous duty pay. To receive hazardous duty pay, a General Schedule (GS) employee must also meet the requirements in 5 CFR 550.904.

   (Note: Prevailing rate (wage) employees may be eligible to receive environmental differential pay under the separate provisions of 5 U.S.C. 5343(c)(4).)

2. **Q - Can title 38 employees receive hazardous duty pay?**

   A - Some title 38 employees are not covered by chapter 51 and are classified under the title 38 qualification-based grading system. Such employees are not covered by the hazardous duty pay authority.

3. **Q - Where are the hazard pay differentials established?**

   A - Appendix A of 5 CFR part 550, subpart I (as provided by 5 CFR 550.903(a)).

4. **Q - Can an employee be paid hazardous duty pay for performing a type of duty not listed under appendix A of 5 CFR part 550, subpart I?**

   A - No. 5 U.S.C. 5545(d) requires the Office of Personnel Management to establish a schedule or schedules of hazard duty differentials and to prescribe regulations governing payment of the differentials. If a duty or type of work is not listed in appendix A, the employee cannot be paid a hazard duty differential.

5. **Q - Who can establish a hazard pay differential?**

A - Amendments to appendix A may be made by OPM on its own motion or at the request of an agency, as defined in 5 U.S.C. 5102(a)(1). (See 5 CFR 550.903(b).) The request for a hazard pay differential must be made by the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

6. **Q - What information are agencies required to submit with requests to amend appendix A?**

A - 5 CFR 550.903(b) requires agencies to submit the following information with their amendment request:

1. the nature of the duty;
2. the degree to which the employee is exposed to the hazard or physical hardship;
3. the length of time during which the duty will continue to exist;
4. the degree to which control may be exercised over the hazard or physical hardship; and
5. the estimated annual cost to the agency if the request is approved.

7. **Q - What additional information does OPM typically ask agencies to submit with requests to amend appendix A?**

A - OPM typically asks agencies to submit the following information with amendment requests, as applicable:

1. a detailed description of the hazardous duty or physical hardship (i.e., explain what causes the hazard);
2. specific wording of the proposed category (as it would appear in appendix A), including the threshold for payment and the recommended percentage to be paid;
3. information on ways to mitigate the hazard (e.g., training, use of safety procedures and equipment);
4. information on the measures the agency has taken to practically eliminate the hazard;
5. an explanation of why the hazard is "unusual;"
6. information on Occupational Safety and Health Administration standards or other published material on safety for the work situation. Information on how the agency will determine whether the hazard is reduced to a less than significant level;
7. descriptions of and statistics on actual accidents or injuries that have occurred

because of exposure to the hazard or physical hardship;

8. information on when a decision is made not to expose an employee to the hazard or physical hardship;

9. information about other Federal agencies that may be affected by such a category;

10. information on Federal Wage System employees in the agency that may be exposed to the hazard or physical hardship in the same manner; and

11. whether and in what manner the hazard has affected the classification of the position.

8. Q - Can OPM provide some examples of the reasons proposed categories have been denied in the past?

A - OPM has denied requests for new hazardous duty pay categories when--

1. the duties would involve remote or potential hazards rather than present or actual hazards--i.e., when the duty is not inherently hazardous and an accident or injury is unlikely;

2. adequate safeguards would reduce the risk to a less than significant level;

3. overseas post differentials already compensate or take into account the hardships and hazards encountered in overseas assignments, such as presence in a war zone;

4. the risk of exposure to the hazard is not directly connected with the performance of assigned duties;

5. the hazard would not be "unusual" and would be hard to distinguish from the ongoing hazards that are inherent in the job; or

6. the hazardous duty or physical hardship is already listed in appendix A.

9. Q - Explain the changes OPM made in the regulations in 1991 concerning taking a hazard into account in the classification of the position.

A - 5 CFR 550.904 allows an agency to approve payment of hazardous duty pay when the hazardous duty or physical hardship has not been taken into account in the classification of the position (i.e., the knowledge, skills, and abilities required to perform the duty are not considered in the classification of the position). If the hazardous duty has been taken into account in the classification of the position, an agency may authorize payment of hazardous duty pay only when the actual circumstances of the specific hazard or physical hardship have changed from that taken into account and described in the position description; and, when using the knowledge, skills, and abilities required for the position and described in the position description, the employee cannot control the hazard or physical hardship; thus, the risk is not

reduced to a less than significant level.

10. **Q - Can an employee be paid hazardous duty pay for voluntarily performing a hazardous duty listed in appendix A?**

A - Hazardous duty pay may be paid only to employees who are assigned hazardous duties or duties involving physical hardship for which a differential is authorized. It may not be paid to an employee who undertakes to perform a hazardous duty on his or her own, without proper authorization, either expressed or implied. (5 CFR 550.904(a))

11. **Q - If an employee performs a hazardous duty (as listed in appendix A) for a hour during the work shift, does he or she receive the hazard pay differential for only that hour?**

A - No. When an employee performs a duty for which a hazard pay differential is authorized, the agency must pay the hazard pay differential for all of the hours in which the employee is in a pay status on the day on which the duty is performed. (5 CFR 550.905)

12. **Q - What is the maximum amount of hazardous duty pay an employee may receive?**

A - An employee may receive no more than 25 percent of his or her rate of basic pay. (5 U.S.C. 5545(d)(2))

13. **Q - May an employee be paid hazardous duty pay for a hazard or physical hardship encountered on the way to work?**

A - No. Hazardous duty pay is paid only for the hours in which the employee is in a pay status on the day on which the hazardous duty is performed. (5 CFR 550.905)

14. **Q - May an employee receive hazardous duty pay during overtime hours?**

A - Yes, because an employee is in a pay status during overtime hours. However, the hazardous duty pay is computed on the employee's hourly rate of basic pay, not his or her hourly overtime rate. (5 CFR 550.905 and 5 U.S.C. 5545(d)(2))

15. **Q - Can hazardous duty pay be paid during hours of paid leave?**

A - Yes, if a hazardous duty is performed on a day on which paid leave is taken. For example, if an employee performs a hazardous duty for 1 hour and then takes annual leave for the 7 hours remaining in his or her workday, the employee is paid hazardous duty pay for the entire 8-hour workday. (5 CFR 550.905)

16. **Q - May hazardous duty pay be paid for periods of leave without pay?**

A - No. Hazardous duty pay may only be paid while an employee is in a pay status. (5 CFR 550.905)

17. **Q - Is hazardous duty pay included in the aggregate limitation on pay?**

A - Yes. Hazardous duty pay is included in the aggregate limitation on pay (5 U.S.C. 5307), which limits an employee's aggregate compensation to the rate payable for level I of the Executive Schedule at the end of a calendar year. (See the definition of "aggregate compensation" in 5 CFR 530.202(4).)

18. **Q - May an employee receiving annual premium pay (for regularly scheduled standby duty or administratively uncontrollable overtime work), or a criminal investigator receiving availability pay, receive hazardous duty pay?**

A - 5 U.S.C. 5545(c)(1) & (2) authorize the payment of annual premium pay for regularly scheduled standby duty and administratively uncontrollable overtime work, and 5 U.S.C. 5545a(c) authorizes availability pay, instead of some other types of premium pay, including hazardous duty pay. Thus, hazardous duty pay may not be paid for hours of work for which an employee is paid these types of premium pay.

19. **Q - Is hazardous duty pay included in the biweekly maximum limitation on premium pay?**

A - No. The limitation on premium pay in 5 U.S.C. 5547(a) does not include hazardous duty pay.

20. **Q - What does "Do." mean, as listed in the "Effective Date" column of appendix A?**

A - "Ditto."

21. **Q - May employees who have been incidentally exposed to asbestos (i.e., not directly connected with their assigned duties) receive hazardous duty pay for asbestos?**

A - No. As stated in the description of asbestos duty in appendix A, agencies may pay hazardous duty pay for asbestos when the risk of exposure is directly connected with the performance of assigned duties. Employees should not be paid hazardous duty pay after being exposed to asbestos (or any other hazard) when the exposure is not triggered by their job duties. It cannot be paid because of an accidental exposure.

22. **Q - Why do the provisions for hazardous duty pay for white-collar employees and environmental differential pay for blue-collar employees have different rules and rates?**

A - Hazardous duty pay and environmental differential pay have separate legal authorities. The authority for hazardous duty pay is found in 5 U.S.C. 5545(d). The legal authority for environmental differential pay is found in 5 U.S.C. 5343(c)(4).

23. **Q - If a Federal Wage System (FWS) employee receiving environmental differential pay (EDP) moves to a GS position that involves the performance of the same duty that prompted the payment of EDP, may the employee receive hazardous duty pay?**

A - Yes, as long as the hazardous duty is listed in appendix A and exposure to the hazard meets the requirements of 5 CFR 550.904, the employee may receive the percentage authorized in appendix A for the hazardous duty.

24. **Q - If an employee who occupies an FWS position retains a GS grade and performs a duty listed in appendix A, is he or she entitled to hazardous duty pay?**

A - Yes. By law (5 U.S.C. 5362(c)), the retained grade of an employee must be treated as the grade of the employee's position for all purposes, including pay setting and pay administration. Thus, the agency must pay the employee under the rules that apply to the General Schedule pay system during the grade retention period. This includes any hazard pay differential that is appropriate for a GS employee who performs the actual duties assigned to the employee (i.e., in this case, the FWS duties). The employee is not entitled to an environmental differential paid to wage employees during the period of GS grade retention.

Holiday Premium Pay and Travel (PQA 99-2, February 4, 1999)

Q. Are employees entitled to holiday premium pay for the time they spend in work-related travel on a Federal holiday?

A. Employees generally are **not** entitled to holiday premium pay for the time they spend in work-related travel during holiday hours of their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546(b).) The Comptroller General has ruled that the criteria in 5 U.S.C. 5542(b)(2) must be used to determine whether travel time is hours of work for holiday premium pay purposes. (These are the same criteria that are used to determine travel time as hours of work for title 5 overtime pay purposes. The criteria are also found in 5 CFR 550.112(g).) Time spent in a travel status is not hours of work for the purpose of paying premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C. 5542(b)(2)(B) for crediting irregular or occasional hours of work for travel. The criteria state that time spent in a travel status away from the official duty station is not hours of employment unless the travel--

- involves the performance of work while traveling (such as employment as a truck driver);
- is incident to travel that involves the performance of work while traveling (such as "deadhead" travel performed by a truck driver to return an empty truck after unloading);
- is carried out under arduous and unusual conditions (e.g., on unpaved roads); or
- results from an event which could not be scheduled or controlled administratively by any individual or agency in the executive branch of the

Government (such as training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

(See Comptroller General opinions B-82637, March 28, 1949; B-168726, January 28, 1970; and 50 Comp. Gen. 519 (1971).) Note that this guidance applies to both Fair Labor Standards Act (FLSA) exempt and nonexempt employees. The provisions on travel time as hours of work for FLSA overtime pay purposes under 5 CFR 551.422 do **not** apply to the payment of holiday premium pay. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, they continue to be entitled to pay for the holiday in the same manner as if the travel were not required.

Note: Under 5 U.S.C. 5542(b)(2)(A), time spent traveling away from the official duty station is also hours of employment if the time spent is within the days and hours of an employee's regularly scheduled administrative workweek. However, this does not apply to travel time on a holiday for holiday premium pay purposes because an employee's regularly scheduled administrative workweek includes only periods of time in which an employee is regularly scheduled to work. The Comptroller General has ruled that travel time during holiday hours (whether driving or riding) is not work time and, therefore, does not fall within an employee's regularly scheduled administrative workweek. (See Comptroller General opinion B-160094, October 12, 1966, and the definition of "regularly scheduled administrative workweek" in 5 CFR 610.102.)

Order of Deductions from Pay (PQA 97-1, July 8, 1997)

Q - What is the proper order of precedence for applying deductions from the gross pay of Federal civilian employees when an employee's gross pay is not sufficient to cover all deductions?

A - Previously, the General Accounting Office (GAO) published a comprehensive order of precedence for salary deductions in title 6 of the GAO Policy and Procedures Manual for the Guidance of Federal Agencies. However, in March 1996, GAO eliminated the comprehensive order of precedence in response to the requirements of the Hatch Act Amendments of 1993 (Public Law 103-94). (See GAO transmittal sheet no. 6-33, March 22, 1996.)

Each employing agency is now responsible for establishing an order of precedence for applying deductions from the gross pay of its civilian employees when gross pay is not sufficient to cover all authorized deductions. The established order of precedence must comply with any applicable laws, regulations, or other legal authority, including the following regulations in title 5 of the Code of Federal Regulations (CFR): section 550.301 (dealing with allotments), section 550.805(e) (dealing with back pay awards), section 550.1104 (dealing with debt collection via salary offset), section 581.105 (dealing with garnishments for child support and/or alimony), and section 582.103 (dealing with garnishments for commercial debt). Consistent with 5 U.S.C. 8334(a)-(c) and 8422(a)-(c), retirement deductions under the Civil Service Retirement System or the Federal Employees Retirement System must be made before any other deduction

(except in the case of back pay as provided in 5 CFR 550.805(e)). Also, as required by 5 U.S.C. 5514(d), a levy pursuant to the Internal Revenue Code takes precedence over salary offsets under 5 U.S.C. 5514 (dealing with offsets to recover a debt due the United States Government).

Pay Setting: Expiration of a Temporary Appointment (PQA 98-1, July 23,1998)

Q - How is an employee's pay set when a temporary promotion is made permanent? How is the pay set if the employee's temporary promotion expires and the employee is returned to the lower grade and then subsequently promoted?

A - If a temporary promotion is made permanent without any lapse in time, the employee is not returned to the lower grade in order to process the permanent promotion. The appropriate action is to process the promotion (nature of action code 702) showing the higher grade as the grade before and after promotion. (See rules 5 and 6, Table 14-B, chapter 14, Office of Personnel Management's Guide to Processing Personnel Actions.) In effect, the promotion increase granted at the time of the temporary promotion is ratified and made permanent by the removal of the not-to-exceed-date limitation on the temporary promotion.

If there is any period of time between the end of a temporary promotion and the beginning of a permanent promotion, the employee must be returned to the lower grade. As required by 5 CFR 531.204(c), the agency must recompute the employee's rate of basic pay for the lower grade as if the employee had never been temporarily promoted. Also, the agency may choose, at its discretion, to apply the maximum payable rate rule in 5 CFR 531.203(c) if that would yield a higher rate. Whatever method is used, the resulting rate is the basis for any subsequent promotion.

With respect to the "maximum pay rate" rule, please note that an employee's highest previous rate may not be based on a rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade. (See 5 CFR 531.203(d)(2)(ii).) If an agency chooses to apply the maximum payable rate rule, it may set pay at any step equal to or less than the maximum payable rate, but not less than the rate to which the employee is entitled under the normal pay-setting rules.

Premium Pay: Limitations (PQA 99-1, February 4, 1999)

Q - What is the amount of the 1999 biweekly premium pay cap for law enforcement officers (LEO's)?

A - Under 5 U.S.C. 5547(c), an LEO may be paid certain types of premium pay in any biweekly pay period only to the extent that the payment does not cause the LEO's basic pay plus premium pay to

exceed the lesser of (1) 150 percent of the applicable biweekly rate for GS-15, step 1 (including any applicable special rate, locality rate, or special law enforcement geographic adjusted rate); or (2) the biweekly rate for level V of the Executive Schedule.

The 1999 biweekly rate for level V of the Executive Schedule is $4,243.20. Since the level V rate is less than 150 percent of the GS-15, step 1, locality rate in all 32 locality pay areas, $4,243.20 is the LEO biweekly cap on premium pay in the 48 contiguous States and the District of Columbia. Outside the 48 States and the District of Columbia, the LEO biweekly premium pay cap is also $4,243.20 because 150 percent of the unadjusted GS-15, step 1, biweekly rate is a higher amount, $4,299.60. (The LEO biweekly premium pay cap is also $4,243.20 for any LEO covered by a special rate schedule that provides a special rate at GS-15, since 150 percent of the biweekly GS-15, step 1, special rate is always higher than the biweekly rate for level V.)

This premium pay cap became effective on the first day of the first applicable pay period beginning on or after January 1, 1999. It applies to employees who meet the definition of "law enforcement officer" in 5 U.S.C. 5541(3) and 5 CFR 550.103.

Recruitment or Relocation Bonuses and Retention Allowances: Authorization for Groups of Employees (PQA 98-4 (July 23, 1998)

Q- Can agencies authorize recruitment or relocation bonuses and retention allowances for groups or categories of employees?

A- Yes, agencies may target or authorize recruitment bonuses, relocation bonuses, and retention allowances for groups or categories of employees under the following conditions:

Recruitment Bonuses--Under 5 CFR 575.104(c), agencies may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis. All requirements in the regulations and the agency's recruitment bonus plan must be met in order to pay a recruitment bonus to an individual employee in the covered group. For example, agencies may authorize a recruitment bonus of up to 25 percent of basic pay, and the employee must be newly appointed in the Federal Government and must sign a service agreement of at least 6 months with the appointing agency.

Relocation Bonuses--Under 5 CFR 575.204(c), determinations to pay a relocation bonus must be made on a case-by-case basis for each employee. However, 5 CFR 575.204(d) allows agencies to waive the case-by-case approval requirement when (1)

the employee is a member of a group subject to a mobility agreement and relocation bonuses are necessary to retain such employees, or (2) a major organizational unit is relocated to a different commuting area and relocation bonuses are necessary to ensure the continued operation of that unit without undue disruption to the agency's mission or service to the public. All requirements in the regulations and the agency's relocation bonus plan must be met in order to pay a relocation bonus to an individual employee in the covered group. For example, agencies may authorize relocation bonuses of up to 25 percent of basic pay, and each employee must relocate to a difficult-to-fill position, establish a residence in the new commuting area prior to payment of the bonus, and sign a service agreement.

Retention Allowances--Under 5 CFR 575.305(d), agencies may authorize a retention allowance of up to 10 percent basic pay (or up to 25 percent with Office of Personnel Management approval) for a group of employees based on a determination that the employees have unusually high or unique qualifications, or the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance. This determination may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions. All requirements in the regulations and the agency's retention allowance plan must be met in order to pay a retention allowance to an individual employee in the covered group. For example, an agency may not pay a retention allowance to an employee in the covered group who is fulfilling a recruitment or relocation bonus service agreement. (Note: OPM published interim regulations in the *Federal Register* on June 23, 1998 (63 FR 34119) that provided the authority to pay retention allowances on a group basis.)

Severance Pay: Effect of Reemployment by the U.S. Postal Service (PQA 97-1, July 8, 1997)

Q - If a separated employee is receiving severance pay under 5 U.S.C. 5595 and is reemployed by the Postal Service, is there any effect on his or her severance pay?

A - Yes. By law, severance payments must be discontinued when the recipient is "reemployed by the Government of the United States." (See 5 U.S.C. 5595(d).) The U.S. Postal Service is part of the U.S. Government. The fact that Postal Service employees are not entitled to receive severance pay under section 5595 (due to the exclusion at 5 U.S.C. 2105(e)) is irrelevant. (We note that past Postal Service employment is creditable service for purposes of computing an employee's severance pay fund. See 5 CFR 550.708(b).)

If the Postal Service job is without time limitation, severance payments are terminated. However, if the Postal Service job carries a definite time limitation, then severance payments are merely suspended for the duration of the time-limited appointment and may be resumed after separation. (See 5 CFR 550.710-711. Note: We plan to revise

these regulations to clarify that, consistent with the law, any Federal employment terminates or suspends severance payments.)

Severance Pay: Separation for Medical Inability to Perform Duties (PQA 98-2, July 23, 1998)

Q - Does an employee who has been removed for medical inability to perform his or her duties have an entitlement to severance pay?

A - The applicable statute authorizes severance pay for employees who are "involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency." (See 5 U.S.S. 5595(b).) A medical inability to perform one's duties is neither "misconduct" nor "delinquency;" therefore, the precise question is whether removal for such inability constitutes "inefficiency" for severance pay purposes.

The legislative history of the severance pay statute suggests at least two guidelines for interpreting its provisions. First, severance pay is intended to help individuals who lose their Federal jobs through no fault of their own. Second, severance pay benefits should be construed liberally in favor of the employee. Accordingly, an employee who is removed for inability to perform his or her duties may receive severance pay if the inability is caused by a medical condition that is beyond the employee's control. This determination should be made by the employing agency based on acceptable medical documentation provided by the employee.

Severance Pay: Temporary Appointments (PQA 98-3, July 23, 1998)

Q - If an employee receives a time-limited appointment that is qualifying for severance pay (i.e., effected within 3 days after separation from a qualifying permanent appointment), who is responsible for making severance payments--the agency at which the employee had a permanent appointment or the agency at which the employee had the time-limited appointment?

A - Severance pay liability rests with the agency employing the employee at the time of the involuntary separation that triggers the severance pay entitlement. In the scenario set forth in the question, the agency employing the employee in the time-limited job will be responsible for making severance payments when the time-limited appointment ends.

Any severance pay entitlement that an employee may have based on an involuntary separation from a permanent appointment is immediately terminated (not suspended) when the employee receives a qualifying temporary appointment. (See 5 CFR 550.711.) Severance pay for an employee in a qualifying temporary appointment is triggered by the involuntary separation from that appointment (including expiration of the appointment as provided in the definition of "involuntary separation" in 5 CFR 550.703) and is computed using the rate of basic pay at the time of separation from that temporary job. (See 5 CFR 550.709(b).) Thus, the agency employing the individual in a time-limited job is liable for any severance payments.

In contrast, if a temporary appointment is not qualifying for severance pay because the employee is hired 4 or more days after involuntary separation from a qualifying permanent appointment, the severance pay liability rests with the agency in which the employee had a permanent appointment. Severance payments by that agency are merely suspended during the temporary appointment.

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